

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DE'CARLO E. PINCKNEY,	:	
	:	
Petitioner	:	CIVIL NO. 1:17-CV-00484
	:	
vs.	:	
	:	
MICHAEL R. CLARK	:	(Judge Rambo)
ET AL.,	:	
	:	
Respondents	:	

MEMORANDUM

On March 20, 2017, Petitioner, De'Carlo E. Pinckney, an inmate at the State Correctional Institution at Albion, Albion, Pennsylvania, filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and a memorandum in support of that petition. (Docs. 1, 2.) Pinckney paid the \$5.00 filing fee. The petition will now be given preliminary consideration pursuant to Rule 4 of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.¹ For the reasons

1. Rule 4 states in pertinent part that "[t]he clerk must promptly forward the petition to a judge under the court's assignment procedure, and the judge must promptly examine it. If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition"

set forth below Pinckney's petition will be dismissed as untimely filed.

Factual Background

In the petition Pinckney alleges that he was sentenced on March 11, 2010, by the Court of Common Pleas of York County, Pennsylvania, for firearms and drug offenses and received an aggregate sentence of imprisonment of 5 to 16 years. (Doc. 1, at 1.) The memorandum accompanying the petition reveals that the sentence was imposed pursuant to a guilty plea. (Doc. 2, at 4.) Pinckney did not take a direct appeal and his conviction became final on Monday, April 11, 2010. A review of the docket of the Court of Common Pleas of York County utilizing Pennsylvania's Unified Judicial System Web Portal confirms Pinckney's procedural history.²

After Pinckney's conviction became final, the docket of the Court of Common Pleas of York County reveals that he did not file any proceedings in that court until October 27, 2014, when he filed a petition

2. Commonwealth of Pennsylvania v. Descarlo Eugene Pinckney, CP-67-CR-0007073-2009.

for post conviction collateral relief. Pinckney's present habeas petition raises issues that were available at the time Pinckney was sentence in 2010.

Discussion

There is a one-year statute of limitations for filing a § 2254 petition for writ of habeas corpus. See 28 U.S.C. § 2244(d)(1). For our purposes, that period starts to run from the date the conviction becomes final, defined in section 2244(d)(1)(A) as "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." However, 28 U.S.C. § 2244(d)(2) also provides that "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation[.]" We will first address the question of when Pinckney's conviction became final for purposes of the commencement of the 1-year statute of limitations and then address whether there is any other time excluded under §2244(d)(2).

As stated above, Pinckney was sentence on March 11, 2010, he did not take a direct appeal, and his conviction became final on April 11, 2010. The period of time which elapsed from April 11, 2010, to October 27, 2014 (over 4 years and 6 months), far exceeds the 1-year period in which he was required to file a petition for writ of habeas corpus in this court. Furthermore, with respect to the post conviction proceedings filed in state court by Pinckney in October, 2014, those proceedings were concluded when the Pennsylvania Supreme Court denied his petition for allowance of appeal on August 30, 2016. Therefore, an additional 6 months and 20 days elapsed before Pinckney filed a habeas petition with this court on March 20, 2017. Consequently, Pinckney's present habeas petition is untimely filed.

An appropriate order will be entered.

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: April 3, 2017